

ASHWANI K BHAKHRI,	No	C-05-3260 VRW
Plaintiff,		ORDER
v		
BRIJ MOHAN DHIR,		
Defendant.		

Some of the confusion here seems to exist because this case actually stems from two separate state cases. In case no HG03112305 ("`305 case"), Dhir sued Ashwani K Bhakhri ("Bhakhri") and other parties for, inter alia, federal civil rights and constitutional violations. In case no HG05224370 ("`370 case"), Bhakhri sued Dhir on a single, state-law libel claim. Dhir asserts in the present motion that when determining whether remand was

1 proper, the court should have considered Dhir's federal claims in  
2 the '305 case. Id at 2-3.

3 Federal jurisdiction is normally measured by the  
4 yardstick of the well-pleaded complaint rule. "Under this rule, 'a  
5 cause of action arises under federal law only when the plaintiffs'  
6 well-pleaded complaint raises issues of federal law.' For removal  
7 to be appropriate, a federal question must appear on the face of  
8 the complaint." Toumajian v Frailey, 135 F3d 648, 653 (9th Cir  
9 1998) (quoting Metropolitan Life Ins Co v Taylor, 481 US 58, 63  
10 (1987) and citing Franchise Tax Board v Construction Laborers  
11 Vacation Trust, 463 US 1, 9-10 (1983)). In addition, only a  
12 defendant may remove a case to federal court. See, e g, 28 USC §§  
13 1441(a), 1443.

14 Because Dhir is the plaintiff, not the defendant, in the  
15 '305 case, Dhir cannot remove that case to federal court. And  
16 because Bhakhri only asserted a state-law libel claim in the '370  
17 case, the well-pleaded complaint rule prevents Dhir from removing  
18 that case as well. Since the court lacks subject matter  
19 jurisdiction over both the '305 and '370 cases, remand is required  
20 and the court DENIES Dhir's request for leave to file a motion for  
21 reconsideration.

22  
23 IT IS SO ORDERED.

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26 VAUGHN R WALKER

27 United States District Chief Judge  
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